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8 PETER STROJNIK,
9 Plaintiff,
10 v.
11 STARBUCKS CORPORATION,
12 Defendant.

Case No. [22-cv-07094-CRB](#)

**ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS FOR FAILURE TO
COMPLY WITH VEXATIOUS
LITIGANT PREFILING ORDER
AND DENYING PLAINTIFF'S
MOTION TO STRIKE**

13 Plaintiff Peter Strojnik (“Strojnik”) alleges in his amended complaint that
14 Defendant Starbucks Corporation (“Starbucks”) discriminates against customers with
15 disabilities, in violation of various federal and state statutes. See Am. Compl. (dkt. 11).
16 Starbucks moves to dismiss and for sanctions because Strojnik’s amended complaint
17 violates a vexatious litigant prefiling order in place in this district. See Mot. to Dismiss
18 (dkt. 16). As explained below, finding this matter suitable for resolution without oral
19 argument pursuant to Civil Local Rule 7-1(b), the Court GRANTS Starbucks’ motion to
20 dismiss.

21 **I. BACKGROUND**

22 On July 21, 2022, Strojnik filed the initial complaint in the Superior Court of Santa
23 Clara County, alleging three causes of action: (1) injunctive relief pursuant to California
24 Code of Civil Procedure § 526(a) based on an alleged violation of the Americans with
25 Disabilities Act (“ADA”) and California Unruh Civil Rights Act (“Unruh”); (2) violation
26 of California’s Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq.; and (3)
27 violation of California’s Consumer Legal Remedies Act (“CLRA”). See Compl. (dkt. 1)
28 Ex. 1. On October 12, 2022, Strojnik served Starbucks with the complaint, but did not

1 serve the summons. See Notice of Removal (dkt. 1) ¶ 6. On October 21, 2022, Starbucks
2 filed a notice in state court, notifying the clerk that Strojnik's complaint had been
3 mistakenly filed, contravening the vexatious litigant prefiling order already in place against
4 Strojnik. See id. ¶ 3; Notice of Mistaken Filing of Vexatious Litigation (dkt. 1) Ex. 2; see
5 also Notice of Removal Ex. A [hereinafter State Court Vexatious Litigant Prefiling Order]
6 (stating that Strojnik is "prohibited from filing any new litigation in the courts of
7 California without approval of the presiding justice or presiding judge of the court in
8 which the action is to be filed"). Due to a docketing backlog, counsel for Starbucks was
9 unable to confirm whether the clerk had received and processed its notice of mistaken
10 filing. See Villamor Decl. (dkt. 16-1) ¶ 8. To preserve its right to proceed in federal court,
11 Starbucks removed this action on November 11, 2022. See id.; Notice of Removal.

12 Four days later, Strojnik filed an amended complaint, alleging four additional
13 causes of action, along with those in the original complaint: (1) violation of the ADA; (2)
14 violation of Unruh; (3) violation of the Disabled Persons Act; and (4) malice and
15 oppression. See Am. Compl. On November 23, Starbucks brought the instant motion to
16 dismiss and motion for sanctions, arguing that Strojnik's filing of the amended complaint
17 was in violation of the vexatious litigant prefiling order in place in this district. See Mot.
18 to Dismiss. Starbucks also brought an ex parte application to stay proceedings while the
19 motion to dismiss was pending. See Ex Parte Application to Stay Action (dkt. 17). In
20 addition to responding to Starbucks' motions, Strojnik also filed a motion to strike
21 Starbucks' motion to dismiss. See Mot. to Strike (dkt. 18). These motions are now fully
22 briefed.

23 **II. DISCUSSION**

24 The Court addresses first Starbucks' motion to dismiss, and then addresses
25 Strojnik's motion to strike.

26 **A. Motion to Dismiss**

27 Starbucks argues that Strojnik's amended complaint must be dismissed because he
28 has failed to comply with Magistrate Judge Ryu's vexatious litigant prefiling order. See

1 Mot. to Dismiss at 4–6. Starbucks is plainly correct.

2 Judge Ryu’s order states as follows:

3 “Strojnik is enjoined from filing any civil action in the Northern
4 District of California that challenges access to public
5 accommodations by disabled people without first obtaining
6 certification from the general duty judge that his claims
7 plausibly allege Article III standing. The Clerk of the Court shall
8 not file or accept any further complaints filed by Strojnik. If
9 Strojnik wishes to file a complaint, he must provide a copy of
10 such complaint, a letter requesting that the complaint be filed,
11 and a copy of this order to the Clerk of the Court. The Clerk shall
12 forward the complaint, letter, and copy of this order to the
13 general duty judge for a determination of whether the complaint
14 should be accepted for filing. Any violation of this order will
15 expose Strojnik to a contempt hearing and appropriate sanctions,
16 and any action filed in violation of this order will be subject to
17 dismissal.”

18 Strojnik v. IA Lodging Napa First LLC, 19-cv-3983, 2020 WL 2838814, at *13 (N.D. Cal.
19 June 1, 2020) [hereinafter Northern District Vexatious Litigant Order]. The order states
20 that Strojnik is prohibited from filing a complaint that “challenges access to public
21 accommodations by disabled people without first obtaining certification from the general
22 duty judge.” Id. It is undisputed that Strojnik filed his amended complaint without first
23 obtaining certification from the general duty judge to allow him to do so, even though his
24 amended complaint clearly “challenges access to public accommodations by disabled
25 people.” Id.; see also Am. Compl.

26 Strojnik’s argument that filing his amended complaint did not constitute a “filing”
27 of a “civil action” in the Northern District captured by Judge Ryu’s order is specious.
28 Opp’n to Mot. to Dismiss (dkt. 19) at 6. “A civil action is commenced by filing a
complaint with the court.” Fed. R. Civ. P. 3. There is no difference between the filing of a
complaint, which Strojnik has done, and the “filing [of] any civil action . . . that challenges
access to public accommodations by disabled people,” as Strojnik is enjoined from doing.
Northern District Vexatious Litigant Order at *13. And even if the Court takes Strojnik’s
argument that his initial complaint was removed from state court by Starbucks—and thus
this “civil action” was “filed” by Starbucks—at face value, that does not alter two

1 underlying truths: First, that Strojnik was also enjoined from filing that initial complaint,
2 and Starbucks only removed when it was not clear that the court clerk would enforce that
3 vexatious litigant order. See State Court Vexatious Litigant Prefiling Order; Villamor
4 Decl. ¶ 8. Second, even if Strojnik’s initial complaint did not “challenge access to public
5 accommodations by disabled people” within the meaning of Judge Ryu’s order, his
6 amended complaint certainly does. See, e.g., Am. Compl. ¶¶ 39–48 (alleging violation of
7 the ADA). Strojnik may not use Starbucks’ removal—the result of a docketing backlog in
8 state court—as a Trojan horse to sneak his amended complaint past the prefiling
9 requirements of Judge Ryu’s order.

10 While the Court dismisses the amended complaint on this ground, Starbucks also
11 seeks dismissal due to inadequate service of process under Federal Rule of Civil Procedure
12 12(b)(5). See Mot. to Dismiss at 7–9. At the outset, it seems undisputed between the
13 parties that Strojnik served the initial complaint but not the summons, in contravention of
14 California requirements. See Villamor Decl. ¶¶ 4, 7; Opp’n to Mot. to Dismiss; Cal. Civ.
15 Pro. Code § 413.10. Strojnik argues that by removing this case to federal court, obtaining
16 a stipulation to extend time, and declining to consent to the jurisdiction of a magistrate
17 judge, Starbucks has waived its right to move for dismissal on this basis. Opp’n to Mot. to
18 Dismiss at 10–11. This is not the law. See Peterson v. Highland Music, Inc., 140 F.3d
19 1313, 1318 (9th Cir. 1998) (holding that waiver of the right to raise a personal jurisdiction
20 defense would occur when a defendant engages in “deliberate, strategic behavior,” such as
21 “sandbagging” by deliberately failing to raise the issue until appeal); see also, e.g., Freeney
22 v. Bank of Am. Corp., 15-cv-2376, 2015 WL 4366439, at *20 (C.D. Cal. July 16, 2015)
23 (finding that neither removal nor procedural filings such as filing a notice of related case,
24 stipulations to extend time, or notices of appearance constitute “deliberate, strategic
25 behavior” under Peterson).¹ As a result, inadequate service of process provides another

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¹ The Court also notes that, in its notice of removal, Starbucks specifically disclaimed any waiver
28 of its right to challenge personal jurisdiction. See Notice of Removal at 9; Freeney, 2015 WL
4366439, at *20.

1 basis for dismissal.²

2 **B. Motion to Strike**

3 Strojnik brings a motion to strike Starbucks' motion to dismiss, arguing that such a
 4 motion is disallowed by General Order 56. See Mot. to Strike at 1–2. At the outset,
 5 Strojnik's motion to strike is procedurally inadequate because a motion to strike under
 6 Rule 12(f) applies to pleadings, not motions. See, e.g., Choyce v. SF Bay Area Indep.
 7 Media Ctr., 13-cv-1842, 2013 WL 6234628, at *2 (N.D. Cal. Dec. 2, 2013). The Court
 8 might deny Strojnik's motion to strike on this basis alone; instead, it will liberally construe
 9 it as another argument in opposition to Starbucks' motion to dismiss. See id.

10 Even seen in this light, Strojnik's argument is lacking. General Order 56 was
 11 adopted “to advance efficient and effective litigation of ADA cases.” Order on Plaintiff's
 12 Motion for Partial Judgment at 2, Strojnik v. Vy Verasa Comm. Co. LLC, 19-cv-2556
 13 (N.D. Cal. Nov. 12, 2019), dkt. 31. It is true that General Order 56 states that “All
 14 discovery, motion practice (except for motions under Rule 12(b) and motions to appear pro
 15 hac vice), and other proceedings are STAYED unless the assigned judge orders
 16 otherwise.” General Order 56 ¶ 3. But as Starbucks points out, it has brought its motion
 17 under Rule 12(b) in compliance with this provision; it merely also raises another issue—
 18 Judge Ryu's vexatious litigant order—not contemplated in the language of General Order
 19 56. It would defy logic to conclude that General Order 56 does not allow a court to
 20 enforce a vexatious litigant order entered in this District which requires dismissal of the
 21 action. Requiring the parties to fulfill each of the requirements of General Order 56 before
 22 promptly dismissing the case given the plain language of Judge Ryu's order would hardly
 23 be an efficient method of disposing of this litigation.³

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25 ² Starbucks also seeks sanctions for Strojnik's violation of Judge Ryu's order, and transfer to
 26 Judge Ryu for a contempt hearing and sanctions determination. See Mot. to Dismiss at 6–7;
 27 Northern District Vexatious Litigant Order at *13 (“Any violation of this order will expose
 Strojnik to a contempt hearing and appropriate sanctions”). Given the unorthodox posture of
 this case, the Court finds that additional sanctions beyond dismissal are unwarranted.

28 ³ We note that it is difficult to take Strojnik's objections on this issue seriously when he himself
 has filed motions clearly disallowed by General Order 56 in prior cases. See Order on Plaintiff's
 Motion for Partial Judgment at 3–4, Vy Verasa, 19-cv-2556, dkt. 31 (denying Strojnik's motion

1 In any case, even if General Order 56 does bar a motion to dismiss for failing to
2 comply with a vexatious litigant prefilings order, the Court may, and does, exercise its
3 discretion to permit Starbucks' motion here. See General Order 56 ¶ 3; see also Johnson v.
4 Torres Enters. LP, 18-cv-2929, 2019 WL 285198, at *2 (N.D. Cal. Jan. 22, 2019). Thus,
5 Strojnik's motion to strike is denied.

6 **III. CONCLUSION**

7 For the foregoing reasons, Starbucks' motion to dismiss is GRANTED, and its
8 motion for sanctions is DENIED. Strojnik's motion to strike is DENIED. Because the
9 action is dismissed, Starbucks' application for a stay is DENIED as moot.

10 **IT IS SO ORDERED.**

11 Dated: January 19, 2023



CHARLES R. BREYER
United States District Judge